The Management Vs. the Presiding

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Court : Chennai

Decided On : Dec-08-2014

Judge : Satish K.Agnihotri

Appellant : The Management

Respondent : The Presiding

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

07. 10.2009 CORAM: THE HONBLE MR.JUSTICE K.CHANDRU W.P.No.32867 of 2006 (O.A.No.2316 of 1998) Dr.K.Alamelu ...Petitioner Vs 1.Government of Tamilnadu, Rep. By its Secretary, Health and Family Welfare Department, Chennai 600 009. 2.The Director of Medical & Rural Health Services, Chennai 600 006. .. Respondents Prayer :Petition under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus, to call for the connected records in G.O.(D) No.23 H & F W Department dated 06.01.1998 and to quash the same and consequently to direct the respondents to reinstate the petitioner back into service with all attendant benefits. For Petitioner : Mr.V.Subbiah For Respondents : Mr.R.Neelakantan,G.A.

ORDER

The petitioner was employed as a Medical Officer in the Government Hospital at Tiruchendur. She filed O.A.No.2316 of 1998 before the Tamilnadu Administrative

Tribunal, challenging the order of the first respondent State in removing her from service by G.O.(D) No.23 Health and Family Welfare Department dated 06.01.1998.

2. The petitioner was a trained Doctor and has got a P.G.Diploma in Gynaecology and Obstetrics. She also has a P.G.Degree in MD-(O&G). She was selected by the TNPSC for the post of Assistant Surgeon and was appointed on 10.02.1989 under the Tamilnadu Medical Services.

3. The petitioner was posted as a Medical officer at the Primary Health Centre at Vannikonendal, Tirunelveli District. Thereafter, she was posted at Veppalodai PHC in Thoothukudi District and subsequently she was posted as an Assistant Surgeon in the Government Hospital at Tiruchendur. She was working in the said hospital till 13.02.1998. She had undergone inservice training and family planning. The petitioner claimed that the Government Hospital at Tiruchendur had 30 beds but has got only few specialists in some branches of medicine. Though an Operation Theatre was functioning, there was no anaesthetist. Therefore, the Medical Officers were asked to perform minor and major surgeries without adequate facilities.

4. On 06.05.1995, the second respondent issued a memo to the petitioner asking for her explanation for having committed a professional negligence resulting in the death of one Mrs.Sakthi, admitted to the Government Hospital, Tiruchendur and on whom a puerperal sterilisation (PS) was done on 07.05.1994. The patient did not survive and died on 14.05.1994 at the District Headquarters Hospital, Tuticorin after the patient was transferred to that Hospital for better treatment from Government Hospital, Tiruchendur.

5. A charge memo dated 17.07.1995 was framed under Rule 17(b) of the Tamilnadu Civil Services (D & A) Rules. The charge against the petitioner was as follows:- "That Dr.K.Alamelu, Assistant Surgeon, Government Hospital, Tiruchendur, did P.S on Tmt.Sakthi at 11 a.m. On 07.05.1994. After delivery the condition of the patient was good on 8.5.94. On the second post operative day though the general condition was good there was slight discharge from abdominal wound. Since certain complication like loose motion, moderate dehydration and

serious oozing from the wound was noticed, suture was removed and resutering done due to gaping of wound. As the condition of the patient became worse Dr.K.Alamelu, Assistant Surgeon, referred the patient to Headquarters Hospital, Tuticorin. Thereupon through intensive treatment was given the patient collapsed. Had Dr.K.Alamelu, Assistant Surgeon been cautious enough to detect bowel injury at the earliest and referred the case to Headquarters Hospital, the death of the patient could have been avoided."

6. Subsequently, the Joint Director of Medical and Rural Health Services (ESI) was appointed as an Enquiry Officer. The Enquiry Officer by his report dated 14.05.1995 held that the injury to bowel was made out very clear and the charge that death could have avoided if the injury was deducted earlier was proved beyond doubt. In the Enquiry Report, the Enquiry Officer has held as follows:- "Dr.Alamelu instead of referring the case to surgeons who are just nearby chose to manage the case by herself and thereby arbitrarily took a stand till the patient was pushed to death bed. Dr.Alamelu in her personal hearing chose to put the act of carelessness and negligence on the poor patient Tmt.Sakthi who was very well under her care in Govt., Hospital, Tiruchendure. How could the responsibility be thrown on the patient, when the patient was on the bed in the hospital."

7. For coming to the conclusion, the Enquiry Officer based on the opinions of Dr.K.S.Ramalingam, Surgeon and Dr.Vijayasekaran regarding the probability of bowel injury. The petitioner was given a copy of the said report and she gave her written explanation date Nil.

8. In her explanation, she had stated she did PS to the patient at 11.00 a.m. on 07.05.1994 and she was not on duty at the time of delivery. On 08.05.1994, the patient's condition was good and the case sheet also reveals the same. Even on the second Post Operative day, her condition was good and there was only slight abdominal wound. Dr.A.Bhagavathy Ammal, Assistant Surgeon also after examining the patient suggested NIL Oral, IV Fluids, IV metogyl, Rules tube aspisetion. Since the patient's condition did not improve, she was referred to the District Headquarters Hospital at Thoothukudi for further management. It was also stated till 12.05.1994, her condition was good and no bowel injury noticed during

surgery. Dr.A.Bhagavathy Ammal, Assistant Surgeon who also saw the patient on 09.05.1994, during her camp also reposted that there was no bowel injury and abdomen soft. Dr.C.Kanagaraj, Medical Officer incharge of the Government Hospital who saw the patient on 12.05.1994 had also stated that the general condition of the patient was good. It was after re-suffering on 13.05.1994, her general condition deteriorated and therefore, she was referred to the District Headquarters Hospital. She also stated that the statements given by Dr.A.Bhagavathy Ammal and Dr.C.Kanagaraj will show that there were no bowel injury till 12.05.1994. Even the perusal of clinical report of the patient in the case sheet was evident that there was no bowel injury to the bowel till 12.05.1994.

9. The case of the petitioner was forwarded by the second respondent to the Government for final orders. The Government in turn consulted the Tamilnadu Public Service Commission for its opinion. The TNPSC by its opinion dated 19.06.1997 stated that the incident had happened due to the professional negligence on the part of the petitioner and two other Doctors who have seen the patient during the post-operative days did not detect the bowel injury which was made clear only during the laporatomy operation performed at Thoothukudi on 14.05.1994. But the petitioner cannot made fully responsible for the death of the patient though she had performed the operation and failed to detect the bowel injury and refer the case to Headquarters Hospital for further course of treatment. The other two Doctors who have seen the case also could not detect the bowel injury and they were also responsible collectively. But taking into account the circumstances of the case and the petitioner's age and seven years of experience in the Government Hospital, it was recommended that her pay can be reduced to the bottom in the time scale in the post of Assistant Surgeon for a period of five years and on restoration the period of reduction shall operate to postpone future increment for five years.

10. In the case of Dr.A.Bhagavathy Ammal, the Commission recommended that she was already involved in another incident wherein, the National Human Rights Commission had recommended compensation payable to the death of one Nallathai and Rs.1,00,000/- was directed to be paid as she was found responsible for the negligent death of Nallathai. The TNPSC was of the view that before

implementing the order of recovery, the issue should have been made a part of disciplinary action taken against her and only then an order of recovery can be passed. The Commission directed that the enquiry may be initiated to include even the recovery of the amount.

11. The State Government upon receipt of the report passed G.O.(D) No.23 H & F W Department dated 06.01.1998 and removed the petitioner from service. In that Government Order, the Government referred to the report of the Collector, Thoothukudi District stating that the Government Headquarters hospital, Tuticorin and Government Hospital, Tiruchendur, three patients died and that the report of the Collector revealed that it was due to the carelessness of Dr.A.Bhagavathiammal and Dr.K.Alamelu, Assistant Surgeon. The names of the three patients were also mentioned in the Government Order. But however, it must be stated that in so far as the petitioner is concerned, she had been charge sheeted only with reference to the death of one Sakthi and there was no allegation regarding the death of Petchiammal and Nallathai.

12. The Government also disagreed with the recommendation of TNPSC and it observed as follows: "5. The Government have further examined the case carefully and independently Dr.K.Alamelu had failed to suspect the bowel injury from 8.5.94 (2nd post operative day) till the patient was put in DIL on 13.5.94. The injury to bowel was very clear and the charge framed against Dr.K.Alamelu is proved beyond doubt. For the proved charge of negligence on the part of the Accused Officer the Government have decided that removing her from service will be the apt punishment, deviating from the views of the Tamil Nadu Public Service Commission. The Government accordingly do and hereby impose the punishment of removal from service on Dr.(Tmt.) K.Alamelu, formerly Assistant Surgeon, Tiruchendur from service."

13. The Government while coming to the conclusion merely accepted the findings of the Enquiry Officer stating that the charges have been proved but did not take note of explanation submitted by the petitioner and the findings of the Enquriy Officer. In the same order, the Government had observed as follows: "Findings of the Enquiry Officer that the charge is held proved are accepted. 3.The

Government have examined the case carefully and independently with records. Perusal of the report reveals that if Dr.Alamelu had evinced more attention to Tmt.Sakthi from 8.5.94 (2nd post operation day) the bowel injury would have been noticed and the death could have been averted. As Dr.K.Alamelu is responsible for the death of Tmt.Sakthi, the charge is held proved beyond doubt. For the proved charge, the Government provisionally decided to remove Dr.K.Alamelu from service."

14. It is against this order, the Original Application came to be filed. Despite notice having been served on the respondents, no reply affidavit has been filed till date.

15. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P.No.32867 of 2006. Since the State Government did not file any reply, this Court by an order dated 24.08.2009 directed the production of the original enquiry file. In the mean while, the petitioner filed M.P.No.1 of 2009 to raise certain additional grounds in support of her writ petition. This Court allowed the said petition by an order dated 07.09.2009.

16. The new ground raised by the petitioner was that since Dr.A.Bhagavathi Ammal was also charge sheeted, but separately tried in respect of the very same incident. But action should have been taken under Rule 9A of the Tamilnadu Civil Services (D & A) Rules. The separate action had prejudiced the petitioner. If Dr.A.Bhagavathi Ammal was also held guilty of the same charge, the petitioner could not have been held solely responsible for the death of Sakthi. The petitioner without prejudice to her contention submitted that if the petitioner was only partly responsible, then the final order holding her fully guilty of the charge was perverse. The petitioner also filed an additional typed set of papers containing the charge sheet given to Dr.A.Bhagavathi Ammal, wherein she was accused of failing to discharge her responsibility in not suspecting bowel injury in the case of the patient Sakthi and that she did not advise the petitioner properly.

17. In the case of Dr.A.Bhagavathi Ammal, the Enquiry Officer in his report in respect of Bhagavathi Ammal had stated as follows: "Dr.A.Bagavathiammal examined the case on 9.5.94. The patient at that time was normal except for the abnormal finding of mild discharge. The case was managed upto 13.5.94 at

Trichendur. Another doctor Kanagaraj also saw the patient during his duty days and he had not also suspected bowel injury. So it is only a collective responsibility on the part of the three doctors. Since the condition of the patient had not warranted the referral on 9.5.94 she had not referred the case to Tuticorin. So the charge that Dr.Bagavathiammal had not suspected bowel injury on 9.5.94 and she did not advise referral is only partly proved."

Therefore, it was contended that the sole responsibility cannot be fixed on the petitioner alone as was done by the State Government.

18. It is not clear as to why when the petitioner and Dr.A.Bagavathiammal were accused of the same incident namely causing negligent death of patient Sakthi no common enquiry was conducted in respect of the said incident. A perusal of the original records produced by the respondent State shows that the enquiry conducted by the respondents were not in accordance with Rules.

19. Even at the time of starting of the enquiry, the preliminary enquiry report in respect of the case was not furnished to the petitioner. By a letter dated 14.04.1995, the petitioner was asked to copy the report. Then at the beginning of the enquiry, the petitioner's defence statement was recorded by the Enquriy Officer on 14.09.1995. Thereafter, Dr.Kanagaraj, Medical Officer in charge, Tiruchendur was enquired. He was cross examined by the petitioner and thereafter, the enquiry office put questions to the witness. Immediately after examination of Dr.Kanagaraj is over, the Enquiry Officer cross examined the petitioner and recorded her statement. Subsequently, one Tmt.Selvaraj(ANM) was cross examined and she did not say anything adverse to the petitioner. After the examination of ANM was over Dr.A.Bagirithi Ammal was examined. Thereafter, Dr.K.S.Ramalingam and Dr.Vijayasekaran were examined. But there, the signatures of the petitioner were not found under the statements given by the two doctors. Only Enquiry Officer and the concerned Doctor have signed. But in the previous Minutes had the signatures of the petitioner. In these two statements, there is nothing to indicate that they were allowed to be cross examined by the petitioner. It is on the basis of this report of the Enquiry Officer the charges were held to be proved beyond doubt. Infact in the enquiry report, the Enquiry Officer

had stated that the petitioner had wanted to have an oral enquiry as well as a personal hearing. She wanted to peruse the preliminary report also.

20. Only on 14.09.1995, i.e. the date of enquiry, she was allowed to peruse the preliminary report. Thereafter, there is nothing in the enquiry report to show that the two doctors Ramalingam and Vijayasekaran were examined in the presence of the petitioner and that she was allowed to cross examine those two witnesses. By no stretch of imagination, it can be considered to be an enquiry against a Government servant much more so against a Medical Officer who is facing an enquiry on grounds of committing professional negligence.

21. The Supreme Court vide its judgment in Samira Kohli v. Dr. Prabha Manchanda,reported in (2008) 2 SCC1dealt with the case of medical negligence which was tried before the consumer court under the consumer protection act. In that context in Paragraph 31 referred to the judgment of the English Court in Bolam's case which is as follows.

"1. The stringent standards regarding disclosure laid down in Canterbury1, as necessary to secure an informed consent of the patient, were not accepted in the English courts. In England, standard applicable is popularly known as the Bolam test, first laid down in Bolam v. Friern Hospital Management Committee. McNair, J., in a trial relating to negligence of a medical practitioner, while instructing the Jury, stated thus: (i) A doctor is not negligent if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. Putting it the other way round, a doctor is not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view. At the same time, that does not mean that a medical man can obstinately and pig-headedly carry on with some old technique if it has been proved to be contrary to what is really substantially the whole of informed medical opinion. (All ER p.122 B-D) (ii) When a doctor dealing with a sick man strongly believed that the only hope of cure was submission to a particular therapy, he could not be criticised if, believing the danger involved in the treatment to be minimal, did not stress them to the patient. (iii) In order to recover damages for failure to give warning the plaintiff must show not only that the failure was

negligent but also that if he had been warned he would not have consented to the treatment."

22. The Bolam test has been followed in India and the decision rendered by the English Courts were referred to in Paragraphs 35 to 40, which is as follows:

35. In India, Bolam test has broadly been accepted as the general rule. We may refer three cases of this Court. In Achutrao Haribhau Khodwa v. State of Maharashtra11 this Court held: (SCC pp.645-46, paras 14-15) 14. The skill of medical practitioners differs from doctor to doctor. The nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and the court finds that he has attended on the patient with due care, skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence.

15. In cases where the doctors act carelessly and in a manner which is not expected of a medical practitioner, then in such a case an action in torts would be maintainable. 36. In Vinitha Ashok v. Lakshmi Hospital this Court after referring to Bolam, Sidaway and Achutrao, clarified: (SCC p.747, para 38) 38. a doctor will be liable for negligence in respect of diagnosis and treatment in spite of a body of professional opinion approving his conduct where it has not been established to the courts satisfaction that such opinion relied on is reasonable or responsible. If it can be demonstrated that the professional opinion is not capable of withstanding the logical analysis, the court would be entitled to hold that the body of opinion is not reasonable or responsible. 37. In Indian Medical Assn. v. V.P. Shantha this Court held: (SCC p.666, para 22) 22. the approach of the courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract

to exercise reasonable care in giving advice or performing services. 38. In India, majority of citizens requiring medical care and treatment fall below the poverty line. Most of them are illiterate or semi-literate. They cannot comprehend medical terms, concepts, and treatment procedures. They cannot understand the functions of various organs or the effect of removal of such organs. They do not have access to effective but costly diagnostic procedures. Poor patients lying in the corridors of hospitals after admission for want of beds or patients waiting for days on the roadside for an admission or a mere examination, is a common sight. For them, any treatment with reference to rough and ready diagnosis based on their outward symptoms and doctors experience or intuition is acceptable and welcome so long as it is free or cheap; and whatever the doctor decides as being in their interest, is usually unquestioningly accepted. They are a passive, ignorant and uninvolved in treatment procedures.

39. The poor and needy face a hostile medical environment inadequacy in the number of hospitals and beds, non-availability of adequate treatment facilities, utter lack of qualitative treatment, corruption, callousness and apathy. Many poor patients with serious ailments (e.g. heart patients and cancer patients) have to wait for months for their turn even for diagnosis, and due to limited treatment facilities, many die even before their turn comes for treatment. What choice do these poor patients have?. Any treatment of whatever degree, is a boon or a favour, for them. The stark reality is that for a vast majority in the country, the concepts of informed consent or any form of consent, and choice in treatment, have no meaning or relevance.

40. The position of doctors in government and charitable hospitals, who treat them, is also unenviable. They are overworked, understaffed, with little or no diagnostic or surgical facilities and limited choice of medicines and treatment procedures. They have to improvise with virtual non-existent facilities and limited dubious medicines. They are required to be committed, service oriented and non-commercial in outlook. What choice of treatment can these doctors give to the poor patients?. What informed consent can they take from them?." 23. The Supreme Court further dealing with the case of medical negligence vide its latest decision in Ins. Malhotra v. Dr. A. Kriplani reported in (2009) 4 SCC705had

cautioned in dealing with the doctors about their negligence and subsequent prosecution in criminal court. Thought it arose out of the context of criminal prosecution the observation found in paragraphs 28 and 29 of the said judgment can have relevance even for departmental action against them. Hence, they may be reproduced below:- 28. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.

29. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reasonwhether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society. (Jacob Mathew case2, SCC pp.22-23, paras 28-29) 24. The Supreme Court while dealing with the case of medical negligence vide its another recent decision in Martin F. D'Souza v. Mohd. Ishfaq,(2009) 3 SCC1relied upon the Bolam test as appointed in Jacob Mathew's case and laid down cautions, guidelines in delaing with such cases. The following passages found in Paras 26,29, 31,34,35,40,42 and 65 may be usefully extracted below:

26. Now what is reasonable and what is unreasonable is a matter on which even experts may disagree. Also, they may disagree on what is a high level of care and what is a low level of care. .....

29. Before dealing with these principles two things have to be kept in mind: (1) Judges are not experts in medical science, rather they are laymen. This itself often makes it somewhat difficult for them to decide cases relating to medical negligence. Moreover, Judges have usually to rely on testimonies of other doctors which may not necessarily in all cases be objective, since like in all professions and services, doctors too sometimes have a tendency to support their own colleagues who are charged with medical negligence. The testimony may also be difficult to understand, particularly in complicated medical matters, for a layman in medical matters like a Judge; and (2) a balance has to be struck in such cases. While doctors who cause death or agony due to medical negligence should certainly be penalised, it must also be remembered that like all professionals doctors too can make errors of judgment but if they are punished for this no doctor can practise his vocation with equanimity. Indiscriminate proceedings and decisions against doctors are counterproductive and serve society no good. They inhibit the free exercise of judgment by a professional in a particular situation. .....

31. As already stated above, the broad general principles of medical negligence have been laid down in the Supreme Court judgment in Jacob Mathew v. State of Punjab1. However, these principles can be indicated briefly here: The basic principle relating to medical negligence is known as the Bolam Rule. This was laid down in the judgment of McNair, J.

in Bolam v. Friern Hospital2 as follows: (WLR p. 586) where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. (emphasis supplied) Bolam2 test has been approved by the Supreme Court in Jacob Mathew case1. .....

34. A medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgment in

choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. For instance, he would be liable if he leaves a surgical gauze inside the patient after an operation, vide Achutrao Haribhau Khodwa v. State of Maharashtra4 or operates on the wrong part of the body, and he would be also criminally liable if he operates on someone for removing an organ for illegitimate trade.

35. There is a tendency to confuse a reasonable person with an error-free person. An error of judgment may or may not be negligent. It depends on the nature of the error. ....

40. Simply because a patient has not favourably responded to a treatment given by a doctor or a surgery has failed, the doctor cannot be held straightaway liable for medical negligence by applying the doctrine of res ipsa loquitur. No sensible professional would intentionally commit an act or omission which would result in harm or injury to the patient since the professional reputation of the professional would be at stake. A single failure may cost him dear in his lapse.

42. When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalised for losing a case provided he appeared in it and made his submissions.

65. From the aforementioned principles and decisions relating to medical negligence, with which we agree, it is evident that doctors and nursing homes/hospitals need not be unduly worried about the performance of their functions. The law is a watchdog, and not a bloodhound, and as long as doctors do their duty with reasonable care they will not be held liable even if their treatment was unsuccessful. However, every doctor should, for his own interest, carefully read the Code of Medical Ethics which is part of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 issued by the Medical Council of India under Section 20-A read with Section 3(m) of the

Indian Medical Council Act, 1956.

25. Coming to the question of procedure adopted in the present enquiry, it is necessary to refer to certain decisions of the Supreme Court which may have some bearing. The Supreme Court while dealing with the procedure to be adopted by an enquiry officer to conduct an enquiry vide decision in S. Parthasarathi v. State of A.P., reported in (1974) 3 SCC459in paragraph 17 observed as follows:

17. ...The decision of this Court in the State of Uttar Pradesh v. Mohammad Nooh makes it clear that if an inquiring officer adopts a procedure which is contrary to the rules of natural justice, the ultimate decision based on his report of inquiry is liable to be quashed. We see no reason for not applying the same principle here as we find that the inquiring officer was biased.

26. The Supreme Court cautioned the enquiry officer in relying upon materials gathered outside the enquiry or without notice to the charged officer and held such a procedure was repugnant to Rule of law. Even if such orders are confirmed in an appeal, that will not cure the defects crept into the enquiry. The said decision is reported in State of Assam v. Mahendra Kumar Das, (1970) 1 SCC709 The following passage found in paragraph 24 may be usefully extracted below:

24. A perusal of the report of the Enquiry Officer, in the proceedings before us, shows that there is absolutely no reference to any data or material, if any, collected by him when he consulted the Deputy Superintendent of Police, Anti-Corruption Branch on July 14 and 15, 1958. But, we have to state that it is highly improper for an Enquiry Officer during the conduct of an enquiry to attempt to collect any materials from outside sources and not make that information, so collected, available to the delinquent officer and further make use of the same in the enquiry proceedings. There may also be cases where a very clever and astute enquiry officer may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusions recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the Enquiry Officer, without its having been disclosed to the

delinquent officer, it can be stated that the enquiry proceedings are vitiated. It was, under such circumstances, that this Court, in Executive Committee of U.P. State Warehousing Corporation v. Chandra Kiran Tyagi3 accepted the view of the High Court that the enquiry proceedings were vitiated by the Enquiry Officer collecting information from outside sources and utilising the same in his findings recorded against the delinquent officer without disclosing that information to the accused officer. It was, again, under similar circumstances that this Court in Sanawarmal Purohit case upheld the order of the High Court holding the enquiry proceedings to be contrary to the principles of natural justice when the Enquiry Officer had collected information from third parties and acted upon the information so collected, without disclosing the same to the accused. If the disciplinary authority himself had been also the Enquiry Officer and, during the course of the enquiry he had collected materials behind the back of the accused and used such materials without disclosing the same to the officer concerned, the position will be still worse and the mere fact that such an order passed by the disciplinary authority had even been confirmed by an Appellate Authority without anything more, will not alter the position in favour of the department.

27. The Supreme Court after analyzing all the previous decisions on the issue, culled out the basic ingredients that are to be found in an enquiry vide its judgment in State of Uttaranchal v. Kharak Singh reported in (2008) 8 SCC236The following passage found in paragraph 15 may be usefully extracted below:

15. From the above decisions, the following principles would emerge: (i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities. (ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer. (iii)In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked

whether he wants to lead any evidence and asked to give any explanation about the evidence led against him. (iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any. (Emphasis added)
28. If the present enquiry is seen in the context of the above legal precedents it will be clear that the enquiry officer's conduct in questioning the petitioner before the departmental witnesses were examined as well as recording the opinion of two senior doctors after the enquiry and in the absence of the petitioner will be clearly illegal. Further, there is no explanation for not conducting a joint trial in respect of the alleged negligence of the petitioner and the other doctor Bagavathyammal. Conducting of separate enquiries on the very same issue had really prejudiced the petitioner.

29. When an opportunity for an employee is given to represent against the findings recorded by the Enquiry Officer, it is incumbent upon the disciplinary authority to deal with the objections raised. In the present case, neither the Government nor the TNPSC which was consulted had ever found out the perfunctory nature of the enquiry conducted by the respondents. The Enquiry was only a farce as the opinion of the two doctors were not recorded in the presence of the petitioner. Infact, there is nothing in the original files to indicate that the petitioner was present during the recording the statement of the two doctors and that she was allowed to cross examine those two doctors.

30. In any event as rightly contended in the additional grounds that in respect of some incident, the respondents ought not to have conducted separate enquiries and that too in such perfunctory manner and deprive the petitioner's right to hold her post. The Supreme Court in the legal precedent set out above had clearly laid down certain guidelines while dealing with the cases of medical negligence. None of those warnings ever had any impact over the respondents. It is too dangerous to hold the petitioner guilty with such scanty evidence.

31. In the light of the above, the writ petition stands allowed; the impugned order will stand set aside. The petitioner is entitled to all the benefits including service

and monetary benefits arising out of such restoration. The respondents are directed to implement the order within a period of two months from the date of receipt of a copy of this order. However, the parties are directed to bear their own costs. svki To 1.The Secretary, Government of Tamilnadu, Health and Family Welfare Department, Chennai 600 009. 2.The Director of Medical & Rural Health Services, Chennai 600 006